

Appl. No.: 10/009,285
Response dated March 9, 2004
Reply to Office action of January 14, 2004

REMARKS/ARGUMENTS

Favorable consideration and allowance of the instant application is respectfully requested in view of the following remarks.

Claims 11, 13-20 are pending in this application.

The Examiner's rejections, as they pertain to the patentability of the claims, are respectfully traversed.

Claims 11 and 13-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by Ansmann et al. (US 6,228,831). This rejection is respectfully traversed for the following reasons.

Initially, Applicant would like to note that it is very well settled that a factual determination of anticipation requires the disclosure, in a single reference, of each and every element of the claimed invention, and an Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See, In re Levy, 17 USPQ2d 1561 (Bd. Pat. App. & Inter. 1990). This being the case, Applicant respectfully submits that the '831 reference fails to anticipate the claimed invention on the grounds that it fails to disclose each and every element thereof.

The present invention is based on the surprising discovery that by employing a certain amount of a polyol ester, a pearlescent concentrate having a high concentration of actives while still being flowable at room temperature, can be formed. With respect to the '831 reference, nowhere within the four corners of said reference is this surprising discovery disclosed, suggested, hinted at or motivated.

The Examiner relies upon the reference's teaching in col. 3, lines 55-58 relating to the use of polyol esters as providing a basis for his finding of anticipation. However, upon careful review of this relied-upon teaching, it is seen that polyol esters constitute merely

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one of a great number of nonionic surfactant candidates which **MAY** but need not be, present in its composition. The '831 reference identifies **five classes** of surfactants which might be employed in its pearlescent concentrate. Each class, in turn, contains numerous candidates which may be employed. Nowhere within the four corners of the reference is there even a mention relating to the use of the claimed polyol esters, in the **claimed amount**, for the purpose of allowing for the formulation of a pearlescent concentrate having a high degree of actives and being flowable at room temperature.

Applicant would also like to note that it is well settled that in order to anticipate the claims, the claimed subject matter must be disclosed in a reference with "sufficient specificity to constitute an anticipation under the statute." Thus, if the claims are directed to a narrow range, the reference teaches a broad range, and there is evidence of unexpected results within the claimed narrow range, depending on the other facts of the case, it may be reasonable to conclude that the narrow range is not disclosed with "sufficient specificity" to constitute an anticipation of the claims. The unexpected results may also render the claims unobvious. See, *MPEP* section 2131.03.

Here, the '831 reference discloses a broad range of surfactant candidates which may be used in its pearlescent concentrate, as well as a broad range of amount thereof to be used, i.e., from 0.1 to 90%. The claimed invention, on the other hand, has identified a very specific type of nonionic surfactant, to be used within a much narrower weight range than is disclosed in the '831 reference for the purpose of allowing the formulation of a pearlescent concentrate having a high degree of actives and being flowable at room temperature. Moreover, the unexpected results associated with the use of the polyol ester with regards to sparkle, particle fineness and opacity, are clearly seen in the examples.

Since the '831 reference fails to disclose with "sufficient specificity" the use of the claimed polyol esters, in the claimed amount, this reference cannot serve to anticipate the claimed

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invention. The unexpected results associated with the use of the claimed polyol esters, in the claimed amount, further serves to establish the "non-obviousness" of the invention as well, per *MPEP* section 2131.03.


Accordingly, for all of the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

It is believed that the foregoing reply is completely responsive under 37 CFR 1.111 and that all grounds for rejection are completely avoided and/or overcome. A Notice of Allowance is therefore earnestly requested.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,

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